



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2022-0201; FRL-10437-02-R4]

#### Air Plan Approval; Tennessee; Revisions to Control of Sulfur Dioxide Emissions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing the approval of a State Implementation Plan (SIP) revision submitted by the State of Tennessee through the Tennessee Department of Environment and Conservation (TDEC), through a letter date June 1, 2021. The SIP submittal revises SIP requirements regarding the installation, maintenance, and termination of ambient air sulfur dioxide (SO<sub>2</sub>) monitors near large industrial SO<sub>2</sub> emitting sources in the State. EPA is approving the adoption of the changes to the Tennessee Air Pollution Control Regulations (TAPCR) related to the control of SO<sub>2</sub> emissions into the SIP. EPA's analysis indicates that this SIP revision would not interfere with attainment or maintenance of any national ambient air quality standards (NAAQS or standards) or any other Clean Air Act (CAA or Act) requirements.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2022-0201. All documents in the docket are listed on the [regulations.gov](https://www.regulations.gov) web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](https://www.regulations.gov) or in hard copy at the Air Regulatory

Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Josue Ortiz, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8085. Mr. Ortiz can also be reached via electronic mail at [ortizborrero.josue@epa.gov](mailto:ortizborrero.josue@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Chapter 1200-3-14 of TAPCR regulates SO<sub>2</sub> emissions within the State of Tennessee. Under the General Provisions of this chapter, found in TAPCR 1200-03-14-.01(6), the State requires every owner or operator of a certain large fuel burning installations and process emission sources to: (1) demonstrate to the satisfaction of the Technical Secretary that their SO<sub>2</sub> emissions will not cause interference with attainment and maintenance of any air quality standard, and (2) install and maintain air quality sensors to monitor attainment and maintenance of ambient air quality standards in the areas influenced by their SO<sub>2</sub> emissions. The rule also allows owners or operators to petition the Technical Secretary to terminate ambient monitoring previously commenced provided certain conditions are met.

The June 1, 2021, SIP revision includes changes to Tennessee's ambient SO<sub>2</sub> monitoring requirements for affected emission sources, including adding a provision to require the use of permitted allowable SO<sub>2</sub> emissions for the demonstration that subject sources are required to make to show that their SO<sub>2</sub> emissions will not cause interference with attainment and

maintenance of any air quality standard, the removal of a less than 20,000 tons per year threshold to qualify for the termination of monitors, the addition of a data completeness requirement for the two years of ambient data collected prior to termination of monitoring, and the addition of a monitoring exemption for any fuel burning installation or process emission source located in an area in which the Technical Secretary operates one or more ambient SO<sub>2</sub> air quality monitors in the area under the influence of the source's emissions. Tennessee's SIP submittal also provides a CAA section 110(l) non-interference demonstration to show that the changes to paragraph 1200-03-14-.01(6) will not interfere with any applicable requirement concerning attainment of any NAAQS and reasonable further progress, or any other applicable CAA requirement. Lastly, the SIP includes clarifying administrative changes to the regulatory language at paragraph 1200-03-14-.01(6).

Through a notice of proposed rulemaking (NPRM), published on December 5, 2022 (87 FR 74356), EPA proposed to approve the June 1, 2021, changes to Tennessee's Section 1200-03-14-.01. The details of Tennessee's submission, as well as EPA's rationale for approving the changes, are described in more detail in the December 5, 2022, NPRM. Comments on the December 5, 2022, NPRM were due on or before January 4, 2023. No comments were received on the December 5, 2022, NPRM, adverse or otherwise.

## **II. Incorporation by Reference**

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Section I of the preamble, EPA is finalizing the incorporation by reference of TAPCR 1200-03-14-.01, *General Provisions*, state effective on May 31, 2021, into the Tennessee SIP. This regulation includes the changes described in Section I, above. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information). Therefore, these materials have been approved by EPA for

inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>1</sup>

### **III. Final Action**

EPA is finalizing the approval of Tennessee's June 1, 2021, SIP submission revising paragraph 1200-03-14-.01(6). Specifically, the SIP revision updates Tennessee's regulations related to SO<sub>2</sub> criteria for applicable sources to install, maintain and terminate SO<sub>2</sub> ambient air monitors near large SO<sub>2</sub> emitting industrial sources. Tennessee's June 1, 2021, submittal changes SO<sub>2</sub> monitoring requirements for process emission sources emitting more than 1,000 tons of SO<sub>2</sub> per year and fuel burning installations having a total rated capacity greater than 1,000 MMBtu/hr, including provisions to allow the owner or operator of these SO<sub>2</sub> sources to petition to terminate ambient air quality monitoring. The SIP submittal also included a CAA section 110(l) non-interference demonstration showing that the changes will not interfere with attainment or maintenance of the NAAQS. EPA is approving these changes because they are consistent with the CAA.

### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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<sup>1</sup> *See* 62 FR 27968 (May 22, 1997).

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175

(65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur dioxide, Reporting and recordkeeping requirements.

Dated: January 31, 2023.

**Daniel Blackman,**  
*Regional Administrator,*  
*Region 4.*

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

## **PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### **Subpart RR – Tennessee**

2. In § 52.2220(c), amend Table 1 by revising the entry for “Section 1200-3-14-.01” to read as follows:

#### **§ 52.2220 Identification of plan.**

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(c) \* \* \*

Table 1 - EPA Approved Tennessee Regulations

<b>State citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Explanation</b>
**	**	*	*	*
Section 1200-3-14-.01	General Provisions	5/31/2021	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	
**	**	*	*	*

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[FR Doc. 2023-02418 Filed: 2/6/2023 8:45 am; Publication Date: 2/7/2023]